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SECOND SUBSTITUTE HOUSE BILL 2647

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State of Washington

60th Legislature

2008 Regular Session

**By** House Appropriations (originally sponsored by Representatives Dickerson, Hudgins, Hunt, Morrell, Pedersen, Williams, Cody, Green, Campbell, VanDeWege, Hasegawa, Roberts, Loomis, Upthegrove, Lias, Hunter, Chase, Smith, McIntire, Barlow, Conway, Priest, Schual-Berke, Simpson, Kenney, Goodman, Sells, Rolfes, Darneille, and Lantz)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to the children's safe products act; amending RCW  
2 43.70.660; adding a new chapter to Title 70 RCW; creating a new  
3 section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Research shows that many toys and other  
6 children's products contain toxic chemicals, such as lead, cadmium, and  
7 phthalates that have been shown to cause harm to children's health and  
8 the environment. These chemicals, and others like them, have been  
9 linked to long-term health impacts such as birth defects, reproductive  
10 harm, impaired learning, liver toxicity, and cancer. Because  
11 children's bodies are growing and developing, they are especially  
12 vulnerable to the effects of toxic chemicals. Regulation of toxic  
13 chemicals in children's toys and other products is woefully inadequate.  
14 To protect children's health, it is important to phase out the use of  
15 lead, cadmium, and phthalates in children's toys and other products and  
16 to begin collecting information on other chemicals that are present in  
17 toys and other products to determine whether further action is  
18 required.

1           NEW SECTION.   **Sec. 2.** The definitions in this section apply  
2 throughout this chapter unless the context clearly requires otherwise.

3           (1) "Children's cosmetics" means cosmetics that are made for,  
4 marketed for use by, or marketed to children under the age of twelve.  
5 Children's cosmetics includes cosmetics that meet any of the following  
6 conditions:

7           (a) Represented in its packaging, display, or advertising as  
8 appropriate for use by children;

9           (b) Sold in conjunction with, attached to, or packaged together  
10 with other products that are packaged, displayed, or advertised as  
11 appropriate for use by children; or

12           (c) Sold in any of the following:

13           (i) Retail store, catalogue, or online web site, in which a person  
14 exclusively offers for sale products that are packaged, displayed, or  
15 advertised as appropriate for use by children; or

16           (ii) A discrete portion of a retail store, catalogue, or online web  
17 site, in which a person offers for sale products that are packaged,  
18 displayed, or advertised as appropriate for use by children.

19           (2) "Children's jewelry" means jewelry that is made for, marketed  
20 for use by, or marketed to children under the age of twelve.  
21 Children's jewelry includes jewelry that meets any of the following  
22 conditions:

23           (a) Represented in its packaging, display, or advertising as  
24 appropriate for use by children under the age of twelve;

25           (b) Sold in conjunction with, attached to, or packaged together  
26 with other products that are packaged, displayed, or advertised as  
27 appropriate for use by children;

28           (c) Sized for children and not intended for use by adults; or

29           (d) Sold in any of the following:

30           (i) A vending machine;

31           (ii) Retail store, catalogue, or online web site, in which a person  
32 exclusively offers for sale products that are packaged, displayed, or  
33 advertised as appropriate for use by children; or

34           (iii) A discrete portion of a retail store, catalogue, or online  
35 web site, in which a person offers for sale products that are packaged,  
36 displayed, or advertised as appropriate for use by children.

37           (3) "Children's product" includes any of the following:

38           (a) Toys;

- 1 (b) Children's cosmetics;
- 2 (c) Children's jewelry;
- 3 (d) A product designed or intended by the manufacturer to help a  
4 child with sucking or teething, to facilitate sleep, relaxation, or the  
5 feeding of a child, or to be worn as clothing by children; or
- 6 (e) Child car seats.
- 7 (4) "Cosmetics" includes articles intended to be rubbed, poured,  
8 sprinkled, or sprayed on, introduced into, or otherwise applied to the  
9 human body or any part thereof for cleansing, beautifying, promoting  
10 attractiveness, or altering the appearance, and articles intended for  
11 use as a component of such an article. "Cosmetics" does not include  
12 soap, dietary supplements, or food and drugs approved by the United  
13 States food and drug administration.
- 14 (5) "Department" means the department of ecology.
- 15 (6) "High priority chemical" means a chemical identified by a state  
16 agency, federal agency, or accredited research university, or other  
17 scientific evidence deemed authoritative by the department on the basis  
18 of credible scientific evidence as known to do one or more of the  
19 following:
- 20 (a) Harm the normal development of a fetus or child or cause other  
21 developmental toxicity;
- 22 (b) Cause cancer, genetic damage, or reproductive harm;
- 23 (c) Disrupt the endocrine system;
- 24 (d) Damage the nervous system, immune system, or organs or cause  
25 other systemic toxicity;
- 26 (e) Be persistent, bioaccumulative, and toxic; or
- 27 (f) Be very persistent and very bioaccumulative.
- 28 (7) "Manufacturer" includes any person, firm, association,  
29 partnership, corporation, governmental entity, organization, or joint  
30 venture that produces a children's product or an importer or domestic  
31 distributor of a children's product. For the purposes of this  
32 subsection, "importer" means the owner of the children's product.
- 33 (8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl  
34 phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl phthalate  
35 (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).
- 36 (9) "Toy" means a product designed or intended by the manufacturer  
37 to be used by a child at play.

1 (10) "Trade association" means a membership organization of persons  
2 engaging in a similar or related line of commerce, organized to promote  
3 and improve business conditions in that line of commerce and not to  
4 engage in a regular business of a kind ordinarily carried on for  
5 profit.

6 (11) "Very bioaccumulative" means having a bioconcentration factor  
7 or bioaccumulation factor greater than or equal to five thousand, or if  
8 neither are available, having a log Kow greater than 5.0.

9 (12) "Very persistent" means having a half-life greater than or  
10 equal to one of the following:

11 (a) A half-life in soil or sediment of greater than one hundred  
12 eighty days;

13 (b) A half-life greater than or equal to sixty days in water or  
14 evidence of long-range transport.

15 NEW SECTION. **Sec. 3.** Beginning July 1, 2009, no manufacturer,  
16 wholesaler, or retailer may manufacture, knowingly sell, offer for  
17 sale, distribute for sale, or distribute for use in this state a  
18 children's product or product component containing the following:

19 (1) Lead or cadmium at more than .004 percent by weight (forty  
20 parts per million);

21 (2) Phthalates, individually or in combination, at more than .01  
22 percent by weight (one hundred parts per million).

23 NEW SECTION. **Sec. 4.** (1) By January 1, 2009, the department, in  
24 consultation with the department of health, shall identify high  
25 priority chemicals that are of high concern for children after  
26 considering a child's or developing fetus's potential for exposure to  
27 each chemical. In identifying the chemicals, the department shall  
28 include chemicals that meet one or more of the following criteria:

29 (a) The chemical has been found through biomonitoring studies that  
30 demonstrate the presence of the chemical in human umbilical cord blood,  
31 human breast milk, human urine, or other bodily tissues or fluids;

32 (b) The chemical has been found through sampling and analysis to be  
33 present in household dust, indoor air, drinking water, or elsewhere in  
34 the home environment; or

35 (c) The chemical has been added to or is present in a consumer  
36 product used or present in the home.

1 (2) By January 1, 2009, the department shall identify children's  
2 products or product categories that may contain chemicals identified  
3 under subsection (1) of this section.

4 (3) By January 1, 2009, the department shall submit a report on the  
5 chemicals of high concern to children and the children's products or  
6 product categories they identify to the appropriate standing committees  
7 of the legislature. The report shall include policy options for  
8 addressing children's products that contain chemicals of high concern  
9 for children, including recommendations for additional ways to inform  
10 consumers about toxic chemicals in products, such as labeling.

11 NEW SECTION. **Sec. 5.** Beginning six months after the department  
12 has adopted rules under section 8(5) of this act, a manufacturer of a  
13 children's product, or a trade organization on behalf of its member  
14 manufacturers, shall provide notice to the department that the  
15 manufacturer's product contains a high priority chemical. The notice  
16 must be filed annually with the department and must include the  
17 following information:

18 (1) The name of the chemical used or produced and its chemical  
19 abstracts service registry number;

20 (2) A brief description of the product or product component  
21 containing the substance;

22 (3) A description of the function of the chemical in the product;

23 (4) The amount of the chemical used in each unit of the product or  
24 product component. The amount may be reported in ranges, rather than  
25 the exact amount;

26 (5) The name and address of the manufacturer and the name, address,  
27 and phone number of a contact person for the manufacturer; and

28 (6) Any other information the manufacturer deems relevant to the  
29 appropriate use of the product.

30 **Sec. 6.** RCW 43.70.660 and 2001 c 257 s 2 are each amended to read  
31 as follows:

32 (1) The legislature authorizes the secretary to establish and  
33 maintain a product safety education campaign to promote greater  
34 awareness of products designed to be used by infants and children(~~(~~  
35 ~~excluding toys~~~~)~~)) that:

1 (a) Are recalled by the United States consumer products safety  
2 commission;

3 (b) Do not meet federal safety regulations and voluntary safety  
4 standards; (~~(e)~~)

5 (c) Are unsafe or illegal to place into the stream of commerce  
6 under the infant crib safety act, chapter 70.111 RCW; or

7 (d) Contain chemicals of high concern for children as identified  
8 under section 4 of this act.

9 (2) The department shall make reasonable efforts to ensure that  
10 this infant and children product safety education campaign reaches the  
11 target population. The target population for this campaign includes,  
12 but is not limited to, parents, foster parents and other caregivers,  
13 child care providers, consignment and resale stores selling infant and  
14 child products, and charitable and governmental entities serving  
15 infants, children, and families.

16 (3) The secretary may utilize a combination of methods to achieve  
17 this outreach and education goal, including but not limited to print  
18 and electronic media. The secretary may operate the campaign or may  
19 contract with a vendor.

20 (4) The department shall coordinate this infant and children  
21 product safety education campaign with child-serving entities  
22 including, but not limited to, hospitals, birthing centers, midwives,  
23 pediatricians, obstetricians, family practice physicians, governmental  
24 and private entities serving infants, children, and families, and  
25 relevant manufacturers.

26 (5) The department shall coordinate with other agencies and  
27 entities to eliminate duplication of effort in disseminating infant and  
28 children consumer product safety information.

29 (6) The department may receive funding for this infant and children  
30 product safety education effort from federal, state, and local  
31 governmental entities, child-serving foundations, or other private  
32 sources.

33 NEW SECTION. **Sec. 7.** (1) A manufacturer of products that are  
34 restricted under this chapter must notify persons that sell the  
35 manufacturer's products in this state about the provisions of this  
36 chapter no less than ninety days prior to the effective date of the  
37 restrictions.

1 (2) A manufacturer that produces, sells, or distributes a product  
2 prohibited from manufacture, sale, or distribution in this state under  
3 this chapter shall recall the product and reimburse the retailer or any  
4 other purchaser for the product.

5 (3) A manufacturer of children's products in violation of this  
6 chapter is subject to a civil penalty not to exceed five thousand  
7 dollars for each violation in the case of a first offense.  
8 Manufacturers who are repeat violators are subject to a civil penalty  
9 not to exceed ten thousand dollars for each repeat offense. Penalties  
10 collected under this section must be deposited in the state toxics  
11 control account created in RCW 70.105D.070.

12 (4) Retailers who unknowingly sell products that are restricted  
13 from sale under this chapter are not liable under this chapter.

14 NEW SECTION. Sec. 8. (1) Before the prohibitions under section 3  
15 of this act take effect, the department shall prepare and distribute  
16 information to in-state and out-of-state manufacturers, to the maximum  
17 extent practicable, to assist them in identifying products prohibited  
18 for manufacture, sale, or distribution under this chapter.

19 (2) The department must assist in-state retailers in identifying  
20 products restricted under this chapter.

21 (3) The department may require manufacturers to electronically file  
22 the notice required under section 5 of this act to the department that  
23 the manufacturer's product contains a high priority chemical.

24 (4) The department shall develop and publish a web site that  
25 provides consumers with information on the chemicals used in children's  
26 products, the reason the chemical has been identified as a high  
27 priority chemical, and any safer alternatives to the chemical.

28 (5) The department shall adopt rules to finalize the list of high  
29 priority chemicals that are of high concern for children identified in  
30 section 4(1) of this act by January 1, 2010.

31 NEW SECTION. Sec. 9. The department may adopt rules as necessary  
32 for the purpose of implementing, administering, and enforcing this  
33 chapter.

34 NEW SECTION. Sec. 10. Sections 1 through 5 and 7 through 9 of  
35 this act constitute a new chapter in Title 70 RCW.

1        NEW SECTION.   **Sec. 11.**  If specific funding for the purposes of  
2  this act, referencing this act by bill or chapter number, is not  
3  provided by June 30, 2008, in the omnibus appropriations act, this act  
4  is null and void.

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